

1
2 John R. Benefiel (P 28970)
3 280 Daines Street
4 Suite 100 B
5 Birmingham, Michigan 48009-6244
6 248-644-1455

7 Charles F. Reidelbach, Jr. (167482)
8 PRESSEISEN & REIDELBACH
9 The Chamber Building
10 110 West "C" Street; Suite 714
11 San Diego, California 92101
12 619-234-4057
13 Attorneys for Defendant

14
15 IN THE UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17
18 NEW AGE PRODUCTS, INC.,

Case No. 96 2129 J CGA

19 Plaintiff,

20 v

21 PROGRESSIVE INTERNATIONAL
22 CORPORATION,

23 Defendant.

24
25 PROGRESSIVE INTERNATIONAL
26 CORPORATION,

27 Counterclaimant,

28 v

NEW AGE PRODUCTS, INC.,

Counterdefendant.

DECLARATION OF WILLIAM FISHMAN

William Fishman, of 17632 Tam O'Shanter Drive, Poway,
California 92064, makes the following Declaration:

1 I am the President of Marketing Services, Inc., a consulting
2 services business I conduct in the field of marketing from my home
3 in Poway, California.

4 I make this Declaration under penalty of perjury. The
5 statements are made of my own personal knowledge and if called to
6 testify on the witness stand, I would testify in the same manner
7 as set forth herein.

8 Sometime in 1980, I had contacts with a Mrs. Marian Gillett,
9 then of 16950 Tesoro Drive, Rancho Bernardo, California,
10 concerning a kitchen product she had invented. This product was
11 a flexible kitchen cutting mat.

12 Mrs. Gillett and I agreed that, through my company, Market
13 Services, Inc., then operated from 11650 Iberia Place, San Diego,
14 California, we would jointly attempt to market her cutting mat.

15 Pursuant to that effort, in late 1980, I commissioned art
16 work to be developed for the product packaging insert, the product
17 to be sold under the trademark "CounterMaid", and attached as
18 Exhibit 1 is a true copy of that artwork.

19 Mrs. Gillett obtained a quotation for plastic sheets from a
20 supplier, John E. Stoneman, Inc. of Newport Beach, California, and
21 attached as Exhibit 2 is a true copy of a quotation she provided
22 me.

23 In July of 1981, I purchased 3,000 sheets of plastic from
24 John E. Stoneman, Inc. to be sold as CounterMaid cutting mats, and
25 attached as Exhibit 3 is a true copy of an invoice covering that
26 purchase.

27 Over the following months extending into 1982, the
28 CounterMaid product was offered for sale and sold through various

1 retail outlets in California and elsewhere.

2 I have at my residence a leftover quantity of the original
3 CounterMaid mats from the original 3,000 purchased in 1981.

4 At the request of John R. Benefiel, Defendants' counsel, on
5 or about October 30, 1997 I took samples of these CounterMaid mats
6 to OCM Laboratories of Anaheim, California for testing.

7 I declare under penalty of perjury that the foregoing is true
8 and correct.

9
10 Date:

Dec 30, 1997

William Fishman

William Fishman



THE REUSABLE...

FLEXIBLE

KITCHEN BOARDS!

KEEPS YOUR COUNTERTOP ALWAYS NEW!

HELPFUL HINTS

KEEP IT HANDY

- A "must" for every kitchen
- Keep one in dad's workshop too!
- Don't forget the camper.

EASY TO CLEAN

- Just rinse with water for most jobs.
- For greasy clean-up ... wipe with paper towel or stand between two plates in dishwasher.
- Will not absorb stains - grape, mustard, even Easter egg dye.

MAKE IT NON-SLIP AT THE KITCHEN COUNTER

- Spread 2 tsp. MINERAL OIL over clean counter and smooth out air bubbles (with straight edge tool such as a food turner). Press the oil out with long strokes until it adheres without slipping.
- Place a second one on top so you can still curl & funnel.

ANOTHER GILLETT PRODUCT FROM
MARKETING SERVICES, INC.
SAN DIEGO, CALIFORNIA

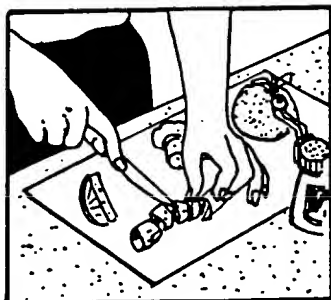


COUNTER-MAID®

PACK OF
3 FOR **\$2⁵⁹**

THE REUSABLE...
FLEXIBLE
**KITCHEN
BOARDS**

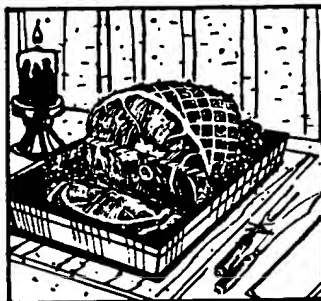
Protects your kitchen counters, cutting boards
and chopping blocks from expensive permanent
damage due to cuts and stains.



CUT & CHOP FOODS!
SALADS! CHEESE! MEAT!
VEGETABLES!
SAVES KITCHEN COUNTER



MORE SANITARY!
Easy to wash. Dishwasher safe.
Prevents bacteria build up. Non-
toxic. Unbreakable.



**CARVE ROASTS! SAVES
KNIFE SHARPENINGS!**
Remove roast from pan & carve
it on your COUNTER-MAID®



IT'S SHAPEABLE!
Bend it, shape it into a funnel for any
vessel. Ideal for preparing foods for
CASSEROLES, SALADS,
WOK OR SKILLET

Cut, slice and chop your foods
right on a handy "COUNTER-MAID"
kitchen board then use it to scoop
and funnel it right into your cooking
or serving dish

ALSO IDEAL FOR:
PROTECTING SINKS FROM SCRATCHES WHEN POT WASHING.
KNEADING AND ROLLING DOUGH, SIFTING FLOUR (Won't stick)

John E. Stoneman, Inc
2043 Westch' Drive
Suite 211
Newport Beach, CA
92660
Telex 181-577
Telephone
714 645-7261

August 29, 1980

Mrs. Marian Gillett
16950 Tesoro Drive
San Diego CA 92128

Dear Mrs. Gillett:

Listed below is confirmation of prices quoted verbally to
you on August 27th.

		<u>10,000</u>	<u>30,000</u>	<u>50,000</u>
9 mil	12" x 14"	110.14/M	92.44/M	83.33/M
	12" x 15"	116.90/M	98.65/M	89.03/M
	12" x 16"	123.80/M	104.85/M	94.78/M
10 mil	12" x 14"	120.76/M	102.11/M	92.20/M
	12" x 15"	130.08/M	108.96/M	98.47/M
	12" x 16"	135.84/M	115.87/M	104.82/M
12 mil	12" x 14"	142.00/M	121.40/M	109.88/M
	12" x 15"	151.10/M	129.69/M	117.48/M
	12" x 16"	160.18/M	137.95/M	125.05/M

These prices are figured without the special packaging.
Let us know if you need further information. We will
send some 10 mil samples as soon as available.

Yours truly,

Charlotte Hampton
Charlotte Hampton (as)

CH:at

JESINC

John E. Stoneman, Inc.
2043 Westcliff Drive
Suite 211
Newport Beach, CA
92660

Telex 181-577
Telephone
714 645-7261

INVOICE
NO 9557

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Marion Gillette
Marketing Services Inc.
11660 Iberia Place
San Diego, Ca 92128

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Same

Invoice Date	Terms	Your Order No.	Salesman	Our Ref. No.
7-29-81	1%/10/N30	Verbal	House	
Date Shipped	Shipped Via			
7-22-81	UPS			
Qty. Shipped				
Newport Beach, Ca				
3000	11 1/2 x 15	9 mil Kleeer Kards	Unit Price	Unit
1000	6 1/2 x 5	9 mil Kleeer Kards	\$ 175.00	Lot
UPS Charge				
Shipment Complete				
			\$ 21.74	
			\$ 196.74	

A service charge of 1% per month on the unpaid balance will be made on all past due accounts. Should this rate exceed the maximum rate that is lawful under the Customer.

FOB
Newport Beach, Ca

UPS Charge

Shipment Complete

A service charge of 1% per month on the unpaid balance will be made on all past due accounts. Should this rate exceed the maximum rate that is lawful under the circumstances, that maximum rate shall apply. Customer also agrees to pay reasonable attorney's fees and other costs incurred at collection.

ORIGINAL